HON'BLE SRI G.S.SINGHVI, THE CHIEF JUSTICE

WRIT PETITION No.5138 OF 2001

Between:

M/s. Kumar Wines, II-24,
Gunthakal, Anantapuram District. …
Petitioner

And

The Prohibition and Excise Superintendent,
Anantapur District at Anantapur and three others.
...Respondents

: O R D E R :

Counsel for the petitioner : Sri T. Amarnath Goud
Counsel for respondent Nos.1 to 3 : Assistant Government Pleader for Prohibition & Excise.

19th September, 2007

In this petition, the petitioner has prayed for issue of a writ of prohibition to restrain the respondents from invoking the bank guarantee furnished by it in connection with Crime No.148/93-94 registered by Excise Sub-Inspector, Guntakal. It has further prayed for issue of a direction for release of the bank guarantee.

The aforementioned prayer of the petitioner is founded on the following assertions contained in the affidavit of Sri K. Sunkanna:

i) that he obtained licence in Form FL-24 for retail sale of all kinds of Indian liquor, foreign liquor and beer in the premises bearing Municipal Stall No.10, Old Bus Stand, Guntakal on 8-6-1994;

ii) that the Excise Sub-Inspector registered a case against him on the charge of violation of the provisions contained in the Andhra Pradesh Excise Act, 1968 (for short, 'the Act');

iii) that Prohibition and Excise Superintendent, Anantapur suspended his licence by invoking Section 31(1)(b) of the Act, but, on a representation made to him, Deputy Commissioner for Prohibition and Excise, Anantapur Division (respondent No.2), vide his order dated 18-6-1994 permitted him to continue the business subject to furnishing of security in the form of FDR/bank guarantee of Rs.62,500/- and deposit of Rs.10,000/- for release of duty-paid stocks;

iv) that Special Judicial First Class Magistrate (Prohibition and Excise Cases), Anantapur, vide his judgment dated 25-2-1999 acquitted him, and

v) that after the judgment of the criminal case, he represented for release of the bank guarantee and refund of Rs.10,000/-

deposited for release of stocks, but the respondents have arbitrarily declined to do so.

In the counter-affidavit filed by him, Sri L.C. Muralidhar, Sub-Divisional Prohibition and Excise Officer, Anantapur, has averred that during the pendency of the criminal case, Sri K. Sunkanna submitted a representation for compounding the offence in terms of G.O.Ms.No.567, Revenue (Ex.III) Department, dated 18-6-1994; that his request was accepted and the case was compounded on 16-1-1995. He has further averred that even though Sri K. Sunkanna was acquitted in the criminal case, his Nowkar (A1) was convicted and fine of Rs.500/- was imposed on him and that in terms of Rule 53(4) of the Andhra Pradesh Indian Liquor and Foreign Liquor Rules, 1970, the action of the Nowkar was deemed to be that of Sri K. Sunkanna. Sri L.C. Muralidhar has relied on Sections 31 and 37 of the Act and pleaded that acquittal in the criminal case does not affect the action taken against the licensee.

The petitioner has filed rejoinder affidavit and denied that he had filed application for compounding the offence. Not only this, he claimed that Deputy Commissioner of Prohibition and Excise, Anantapur Division is not competent to compound the offences in terms of Sections 47 and 47(A) of the Act. For the sake of reference, paragraph 10 of the rejoinder affidavit of Sri K. Sunkanna is reproduced below:

> "10. The petitioner has not filed any application before the 2nd respondent for compounding the offence. The 2nd respondent is not vested with the powers of compounding u/Sec.47 and 47(A) of A.P. Excise Act. The 2nd respondent is the appellate authority under Sec.63(1) of A.P. Excise Act. A fair reading of Sec.47 clearly discloses that Sec.36(b) & (c) are not compoundable. Hence, the

question of compounding does not arise."

On 1-8-2007, the case was adjourned with a direction to the respondents to produce the original record including copy of the proceedings/order dated 16-1-1995.

Today, the learned Assistant Government Pleader for Prohibition and Excise produced file which contains the application made by the petitioner for compounding the offence and order dated 16-1-1995 passed by respondent No.2. The application of the petitioner and order dated 16-1-1005 are reproduced below:

"**Application of the petitioner**

To
The Deputy Commissioner of Excise,
Anantapur.

Respected Sir,

Sub:-Excise case in Cr.No.148/93-94 against M/s. Kumar Wines, FL-24 Guntakal was suspended for loose sales in the shop – certain representation to allow and run the business with compound fee requested – reg.

Ref:-Excise Superintendent, Ananthapur, R.C.No.512/94/B2, dated 11-6-1994.

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I submit that in the reference cited, the Excise Superintendent, Ananthapur suspended my shop licence on the alleged offence of loose sales on 11-6-1994. In this connection, I submit that I have not given any instructions to my Nowkar to conduct loose sales. The offence was committed without my knolwedge. However, it may be, I accept the responsibility for the offence and I request that the case may be compounded by the Commissioner of Excise as per G.O.Ms.No.567, R (Ex.III), 18-6-1994.

Hence, I request that my case may be considered sympathetically and I may be allowed to continue my business by compounding the offence and I shall abide the conditions that will be laid down by the Honourable Deputy Commissioner of Excise in this regard.

Thanking you,

Yours faithfully,
Sd/-
K.Sunkanna
M/s. Kumar Wines, Guntakal."

"PROCEEDINGS OF THE DEPUTY COMMISSIONER OF EXCISE: ANANTAPUR

PRESENT: SRI HARISH KUMAR, I.A.S.

Rc.No.512/94/B2. Dated 16-1-95.

Sub:- Excise – Anantapur Distarict – Case in Cr.No.148/93-94 against M/s. Kumar Wines, FL-24 Guntakal Shop licence suspended – Certain petition filed by the licensee to allow to run the shop – Reg.

Ref:- 1) Excise Supdt., Anantapur Rc.No.993/94/B4, dt.11-6-94.
2) Petition filed by the licensee of M/s. Kumar Wines, Guntakal.
3) This Office Rc.No.512/94/B2, dt.18-6-94.
4) G.O.Ms.No.567, Rev (Ex.III) Dt.18-6-94.
5) Petition filed by the licensee of M/s. Kumar Wines, F.L.24 Guntakal dt.24-9-94.

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In the reference 1st cited, the Excise Superintendent, Anantapur suspended the shop licence of M/s. Kumar Wines, F.L.24 Guntakal for sale of liquor in loose in the shop. The brief facts of the case are that on 8-6-94 at 7.00 p.m. the Excise Inspector, Excise Sub Inspector Guntakal and Excise Inspector Mobile Party and staff with mediators raided M/s. Kumar Wines Guntakal and found the nowkar R.Chandrasekhar in the shop. They checked the shop and found 4 nips of Roman Eagle Brandy having loose carks each containing about 90 ml of liquor. They also detected empty bottles and 2 glass tumblers. On demand the nowkar has not produced account book and bill book. On enquiry the nowkar has stated that he has been conducting loose sales of liquor with the knowledge of the licensee of the shop. Hence a case was registered in Cr.No.148/93-94 u/s 36(b) &(c) of A.P. Excise Act and the shop licence of M/s. Kumar Wines F.L.24 Guntakal was suspended by the Excise Superintendent, Anantapur.

Aggrieved by the above order, the licensee of M/s. Kumar Wines,

F.L.24 Guntakal has filed a petition in the reference 2nd cited stating that the Excise officers inspected his shop on 8-6-94 at 9.00 p.m. and found one loose bottle and was also served on him. He further requested to permit him to open the shop and he would comply with the conditions imposed by the Deputy Commissioner.

In the reference 3rd cited, the orders of Excise Superintendent, Anantapur in Rc.No.993/94/B4, dt.11-6-94 were suspended for 20 days as he passed the orders of shop licence without issuing any notice as envisaged under Section 31(1) of A.P. Excise Act and also that only duty paid stocks were involved in the offence. The Excise Superintendent, Anantapur was directed to allow the licensee to run the business on providing a bank guarantee for Rs.62,500/- equal to three months licence fee as security and another bank guarantee of Rs.10,000/- for release of duty paid stocks. The Excise Superintendent, Anantapur was allowed to proceed further as per law. The licensee was allowed to approach this office again on receipt of Chemical Examiner's report for further relief. The orders of stay have been extended subsequently up to 30-9-94.

O R D E R:

In view of the representation of the licensee to compound the offence under provision of G.O.Ms.No.567, Rev. (Ex.III) Department, dated 18-6-94 the case is compounded for an amount equal to three months licence fee for which bank guarantee has been furnished by the licensee. The bank guarantee for Rs.10,000/- furnished by the licensee for release of duty paid stocks may be released to the licensee. Hence, the case in Cr.No.148/93-94 of Guntakal Range is ordered to be closed.

Sd/-
Dy. Commissioner of Excise,
Anantapur."

The application filed by Sri K. Sunkanna was shown to Sri T. Amarnath Goud, learned counsel for the petitioner, who fairly admitted that the assertion contained in paragraph 10 of the rejoinder affidavit of his client is not correct.

I have heard learned counsel for the parties. In my opinion, the writ petition is liable to be dismissed because,

i) the petitioner is guilty of highly contumacious conduct of making a patently false statement in paragraph 10 of the rejoinder affidavit that he had not filed any application before respondent No.2 for compounding the offence;

ii) the petitioner has not challenged order dated 16.1.1995 and without quashing the same, this Court cannot direct the respondents to release the bank guarantee furnished by the petitioner;

iii) in the application filed by him, Sri K. Sunkanna unequivocally admitted that he conducted the business in violation of the provisions of the Act. Once the petitioner admitted the violation of the Act, it is not possible to find any fault with the order passed by the Deputy Commissioner.

In the result, the writ petition is dismissed.

As a sequel to dismissal of the writ petition, WPMP.No.6559 of 2001 filed by the petitioner for interim relief is also dismissed and the interim order is vacated.

G.S. SINGHVI, CJ

19th September, 2007
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